

**COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

Initial Petition and Application of NSTAR Electric
Company d/b/a Eversource Energy for a Certificate
of Environmental Impact and Public Interest
Pursuant to G.L. c. 164, §§ 69K-69O

EFSB 22-01

BOSTON RESIDENTS GROUP
COMMENT ON THE TENTATIVE DECISION

INTRODUCTION

On November 9, 2022 the Presiding Officer issued a Tentative Decision in this Certificate Proceeding and advised that “The **Parties and Limited Participants** may file written comments on the Tentative Decision with the Presiding Officer and the electronic Service List for the proceeding no later than 5:00 p.m. on **Friday, November 18, 2022.**” Tentative Decision with Cover Email re Tentative Decision. November 9, 2022.

Boston Residents Group (“BRG” or “Residents”) is a party in this proceeding under G.L. c. 30A § 10A: Hearing Officer Ruling on Motions to Intervene and Motion to Participate as a Limited Participant. May 6, 2022.

Within the scope of G.L. c. 30A § 10A§ participation, Boston Residents Group now provides comment on the Tentative Decision, in two sections: Section I: “Requested Amendments to the Tentative Decision”, and Section II: “Recommendations Concerning Board Presentation”.

In summary, Residents conclude that without enhanced analysis of individual and cumulative environmental and environmental justice impacts of the proposed East Boston substation, the Board cannot make conclusive findings supported by substantial evidence that the energy and environmental benefits of the proposed substation outweigh its benefits.

I. Requested Amendments to the Tentative Decision

Residents request the following amendments to the Tentative Decision¹:

Requested Amendment 1: Page 119/Line 10. Add the following with respect to the Falmouth substation and Martha's Vineyard distribution equipment serving the Company's Martha's Vineyard Reliability and 91 Cable Replacement Projects:

BRG argues that the location of the Falmouth substation and Martha's Vineyard distribution equipment serving the Infrastructure Crossing Facility has relevance in showing that the proposed East Boston substation is not a water-dependent use:

The substation and distribution equipment serving the Company's Martha's Vineyard Reliability Project are located in Falmouth and Oak Bluffs, 2.5 miles and 0.2 miles respectively from their cable landing sites, as the Company confirmed:

The distance of the proposed 25-kV distribution cable that will extend from the Company's existing Falmouth Substation to a cable landing on Surf Avenue is approximately 13,350 feet.

The distance of the proposed distribution cable from the Oak Bluffs cable landing site to the distribution equipment proposed on a Company-owned parcel on Eastville Avenue is approximately 1,220 feet.

It should be noted [*or* the Company notes] that the Martha's Vineyard Reliability Project is still in its early stages of planning, design, and permitting. Distances between cable landings and their respective termination points are subject to change as design progresses. EFSB 22-01; RR-BRG-2.

Requested Amendment 2: Page 162 / Line 13. After the sentence reading "Thus, the alleged "loss" of a prospective recreational facility at the Substation site appears inconsistent with at least some other planning efforts by the City of Boston.", add the following sentence or similar:

"At the same time, there is no evidence in the record indicating that the City of Boston never intended to sufficiently remediate the site to allow for creation of a recreational facility. Assertions by BRG and others that the City fully intended to construct a recreational facility on the site prior to the City's land-exchange decision are not unreasonable."

¹ For the purpose of calculating page / line location in the Tentative Decision, BRG includes both text and section headings in the line count but omits blank lines.

(BRG notes its response to the proposed Substation use on the site rather than a recreational facility is accurately described as “expressed disagreement” rather than “voiced unhappiness” as at page 161 line 17. There are different connotations in these descriptions.)

Requested Amendment 3: Page 164/Line 21. In addition to a footnote (fn 144) add the statement by Attorney General Maura Healey concerning the Board decision in EFSB 14-04A and referenced in BRG Initial Brief at 10:

On February 22, 2021 Massachusetts Attorney General Maura Healey issued a statement concerning the Siting Board’s February 22, 2021 decision to approve the East Eagle Tentative Decision with conditions. NSTAR Electric Company d/b/a Eversource Energy EFSB 14-04A/D.P.U. 14-153A /14-154A at 14. The Attorney General stated via a social media post from her official account:

There was no energy justice today in the EFSB’s decision to approve the East Boston substation. East Boston already bears a disproportionate burden of industrial infrastructure and the associated environmental and health risks, and today’s decision will only increase that.

We must chart a new course where communities can meaningfully participate in EFSB proceedings and where energy and environmental justice are central to decision-making.

Requested Amendment 4: Page 165/Line 20. In addition to a footnote (fn 146), add a description and the final vote tally in the City of Boston Advisory Ballot Measure concerning the proposed substation:

In the Municipal Election in November 2021, Boston voters considered an Advisory Ballot Measure which asked whether a substation should be built at the proposed site in East Boston or at an alternative safe location such as on Massport land at Logan Airport.

The Ballot Measure was unanimously endorsed by resolution of the City of Boston City Council. The final vote total for the Advisory Ballot Measure was:

YES:	19,787 votes	16.25%
NO:	101,953 votes	83.75%

II. Recommendations Concerning Board Presentation

At the December 16, 2020 Energy Facilities Siting Board public meeting in EFSB14-04A, the Presiding Officer presented the Board several options concerning the Tentative Decision in that proceeding:

Now the Board has several options. You may approve the TD as amended or consider additional amendments. You may reject the tentative decision, in which case the company is left with the Siting Board's earlier approval of the original site. You may decide that you require more information than that provided by the tentative decision and reopen the record, as requested by GreenRoots and others. EFSB 14-04A DPU 14-153A-14-154A. Public Meeting of the Energy Facilities Siting Board. December 16, 2020. Transcript at page 35 lines 3-10.

Residents now make several recommendations for presentation to the Board with respect to the Tentative Decision in EFSB 22-01.

Residents confirm their understanding that presentations by the Presiding Officer and Board staff presenting the Tentative Decision to the Board will be an impartial description and analysis of case evidence, issues, and applicable law and regulation.

Residents additionally confirm that the Tentative Decision fairly sets forth Residents arguments as presented under G.L. c. 30A § 10A, with the clarifications and amendments listed here, and acknowledge the time and effort expended by the Presiding Officer and all Siting Board staff evaluating Residents arguments.

Residents provide these recommendations in the interest of focusing on issues likely to arise during the public meeting in EFSB 22-01 and in advancing the Board's statutory mandate under G.L. c. 164 §69H to provide a reliable energy supply to the Commonwealth with minimal impacts to the environment at the lowest possible cost, and requirement that the Board make supported findings that environmental and energy benefits outweigh the burdens.

Recommendation 1: Concerning enhanced environmental and environmental justice analysis for the proposed substation:

Residents have argued that the Siting Board may, and should, carry out enhanced analysis of environmental and environmental justice impacts in East Boston. BRG Initial Brief at 15-16.

Residents reaffirm the argument and anticipate presenting this option to the Board.

Following the set of alternative Board actions presented in EFSB 14-04A, Residents conclude that a permissible Board action in EFSB 22-01 would be to direct that an enhanced environmental impact and environmental justice analysis be undertaken - within a defined time period - and that the parties be given opportunity to provide limited briefing on the results of the enhanced analysis.

Residents state that the interests of impartial and informed Board deliberation on the Tentative Decision would be advanced by confirming to the Board that it has discretion to direct that enhanced environmental and environmental justice analysis be undertaken for the proposed East Boston substation, and to define the terms of such enhanced analysis.

Residents acknowledge that the Presiding Officer, staff, and parties may have divergent views on this issue and may present their reasoning to the Board - whether arguing that the Board does not have this discretion or - if it does - it should not exercise it.

Recommendation 2: Concerning of Boston approvals included in the requested composite Certificate, and, relatedly, the “reject decision” option.

The Tentative Decision lists 14 separate, as yet not issued permits, approvals, and authorizations (the “Approvals”) necessary for construction and operation of the proposed substation. Tentative Decision Exhibit A, at 178-180.

Residents have argued that the Board exclude from the requested composite certificate items numbered 1 through 11, being the several City of Boston Approvals required for the proposed East Boston substation. BRG Initial Brief at 25-26.

Residents have stated that a Final Decision should direct that the Company re-submit its applications for these Approvals to the City; that a deadline be set for City action on the

Company's applications; and that if within this designated time the City does not act, or denies the permits, or imposes burdensome conditions, that the Company return to the Board for disposition consistent with the other findings and decisions in a Final Decision. BRG Initial Brief at 26; BRG Reply Brief at 21-25.

Residents reaffirm their argument that City of Boston deferral of action on these Approvals while the underlying project approval was under judicial review was not undue delay, but reasonable and consistent with widely-adopted agency practice.

On November 4, 2022 the decision was issued in that case, affirming the Siting Board's approval of the Company's project change petition. GREENROOTS, INC. vs. ENERGY FACILITY SITING BOARD & another. SJC-13233.

There is nothing now preventing the City of Boston from acting on the Company's application.

At this juncture Residents defer to the City of Boston decision on whether to request that the Board exclude Approvals 1 through 11 from the composite Certificate.

This notwithstanding, presentation to the Board in setting forth the "reject Tentative Decision" option should differentiate between the 12 municipal Approvals (11 City of Boston and 1 City of Chelsea) for which the Company can reapply without delay, and the G.L. c. 91 Waterways License, ordinarily issued by MassDEP (#13) and an approval of a Superseding Order of Conditions under the Massachusetts Wetlands Protection Act, ordinarily issued by MassDEP (#14), both of which would revert to significantly different paths of review.

As reading of relevant law, regulation, and Siting Board cases indicates that a G.L. c. 164, §§ 69K-69O Certificate need not include all not yet obtained Approvals and a Certificate may include a subset of not yet obtained Approvals.

A line of prior dockets confirms Siting Board preference to "resolve local issues on a local level whenever possible". Russell Biomass LLC EFSB 07-4/D.P.U. 07-35/07-36 (2009)

at 61. BRG Reply Brief at 23: In Russell, the Board addressed the question of how applicants might best resolve issues surrounding pending local permits:

We affirm the commitment, as stated in the Tennessee Decision (2002) and the Nextel Decision, to favor the resolution of local issues on a local level whenever possible to reduce local concern regarding any intrusion on home rule. Russell Biomass LLC EFSB 07-4/D.P.U. 07-35/07-36 (2009) at 61 citing Tennessee Gas Pipeline Company, D.T.E. 01-57 (2002) at 19.

In Eversource 2017, the Board acknowledged the role of municipal home rule authority in the context of zoning exemption, and the value of reaching agreement with local jurisdictions in facility siting decisions. Eversource 2017 at 153, incl fin 145.

Presentation to the Board as to options in this proceeding should indicate why - in view of past practice and expressed policy preference and the SJC decision in GreenRoots vs. Board - returning the Boston and Chelsea Approval applications to their respective municipalities for a time-limited review opportunity is not recommended.

Additionally, Residents recommend clarification to the Board whether a G.L. c. 164, §§ 69K-69O Certificate must include all pending required Approvals or whether a Certificate may include only a subset of not yet obtained Approvals.

Recommendation 3: Concerning determination of whether energy and environmental benefits outweigh energy and environmental burdens.

Residents recommend that presentation to the Board include a comprehensive description of the evaluation criteria the Board is to apply under G.L. c. 164 §69H and when determining “energy benefits” under the Roadmap Law, and whether and how individual and cumulative environmental burdens on East Boston are identified, evaluated, and most consequently weighted by the Board in making the required Roadmap Law balancing of burdens and benefits.

Specifically, Residents understand that the Board has case-specific discretion to evaluate energy reliability, environmental impact, and cost factors based on the evidence and circumstances either presented or lacking. Based on this understanding, residents recommend

that the Board be fully apprised of their scope of discretion in assigning weight to each of the separate factors considered in decision-making.

CONCLUSION

If we understand “equity as a journey” “[EFSB 22-01 Transcript](#) at 675 lines 21-22, with the [Tentative Decision](#) for the East Boston substation consolidated Certificate, the Energy Facility Siting Board has arrived at a consequential crossroads in that journey.

Residents respectfully argue that Energy Facility Siting Board adoption of the Tentative Decision granting the requested consolidated Approvals will, as Attorney General Healey stated, only increase the disproportionate burden of industrial infrastructure and the associated environmental and health risks already experienced by East Boston residents.

Fortunately, the Energy Facility Siting Board has discretion to chart another course, and direct that enhanced environmental analysis and environmental justice analysis be carried out for the proposed substation.

Without such an enhanced analysis, the Board cannot make conclusive findings supported by substantial evidence that the energy and environmental benefits of the proposed substation outweigh its benefits.

These findings are required under the Roadmap Law (An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy, St. 2021, c. 8, §§ 56-60, M.G.L. c. 30, §§ 62, 62K (“Roadmap Law”) - a Law passed by the legislature and signed by the Governor after the two prior substation proceedings EFSB 14-04 and 14-04A were concluded.

BRG requested amendments to the Tentative Decision and recommendations for presentation to the Board are made in the interest of informed and impartial Board deliberation, and are intended to help fulfill the Board’s statutory mandate under G.L. c. 164 §69H to provide a reliable energy supply to the Commonwealth with minimal impacts to the

environment at the lowest possible cost, and - in furtherance of the requirements and purposes of the Roadmap Law - to ensure that environmental justice communities such as East Boston no longer bear a disproportionate, adverse burden from siting of energy facilities and other industrial and commercial uses such as Logan Airport and its off-airport facilities, which widely benefit the Commonwealth but which have immediate adverse impacts on East Boston and its residents.

Respectfully submitted,

Francis E. O'Brien

Francis E. O'Brien

with Gail Miller

232 Orient Avenue

East Boston, MA 02128

east.boston.climate.action@gmail.com

for Boston Residents Group

Date: November 18, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have served this MEMORANDUM ON THE TENTATIVE DECISION via email on the EFSB 22-01 Service List dated May 27, 2022.

At Boston, Massachusetts this 18th day of November, 2022.

Francis E. O'Brien

Francis E. O'Brien
with Gail Miller
232 Orient Avenue
East Boston, MA 02128
east.boston.climate.action@gmail.com
for Boston Residents Group